

Written evidence submitted by International Group of P&I Clubs

International Group of P&I Clubs Background

The International Group of P&I Clubs (the International Group) comprises twelve marine third party liability (protection and indemnity) insurers providing such insurance to shipowners of approximately 87% of the world's ocean-going tonnage. Through the International Group of P&I Clubs' Secretariat, the P&I Clubs have a well-established history of close collaboration with officials in HMT and OFSI, US State Department, Treasury, Office of Foreign Assets Control and the European Union on matters pertaining to the regime of sanctions that has been introduced on inter alia Iran, DPRK and Russia.

Each International Group Club is an independent, not-for-profit mutual insurance association, providing third party liability insurance for its shipowner and charterer members for liabilities arising out of the use and operation of ships. Each Club is owned or managed by its shipowner and charterer members, and its operations and activities are overseen by a board of directors, or committee, elected by the membership.

This response relates specifically to the UK maritime services ban.

1. Whether financial sanctions instituted by the UK on Russia, are complete and effective in terms of the entities that have been designated, and the entities which have to comply with the rules?

The trade and financial services restrictions and prohibitions on the maritime transport of Russian oil and oil products has, in our view, resulted in several unforeseen and unintended consequences. The Russian Oil Price Cap (OPC) regime allows traders, shipowners, charterers, financial services providers, e.g., insurers, to engage in the sale, purchase and carriage of Russian oil and oil products by sea, provided the sale price of Russian oil or oil products are sold at or below the price stipulated by the G7 and its coalition of States. Evidence of the sale price of such products is dependent on a process of attestations that must be provided initially by the oil products trader. These attestations may or may not provide accurate price information thereby exposing shipowners and insurers to allegations that they have breached the rules governing the OPC and expose them to a risk of a sanction. There is some uncertainty as to what steps, in practical terms, a party is expected to complete to ascertain whether an attestation can be relied upon. This has resulted in a migration of trade activities outside the of the jurisdiction of the G7 and its coalition.

There has been an overreliance on the attestation process. The attestation is a flawed regime which potentially exposes both the P&I Club and a shipowner, operator, charterer to a breach of the OPC. The so-called Tier 1 attestation is merely a self-declaration signed by traders that the sale price of oil or oil products comply with the price cap. Our concern has always been that the G7 coalition partners have failed to direct sufficient attention on Tier 1 traders. The International Group has called for greater scrutiny of traders and notes the recent changes to the attestation relating to the requirement of itemised price information and for ancillary costs to be recorded and itemised. It is too early to assess the effectiveness of these recent changes. However, given that there is a reliance on the same third parties for this ancillary information too, the International Group is concerned about potential exposure

to a breach of the OPC as P&I Clubs or their members are not in a position to assess the validity of the information provided.

Most ships that now trade in Russian oil and oil products (whether OPC compliant or not) operate under the rules of jurisdictions in which the OPC does not apply and in countries where it is not observed. Provided the owners and operators of ships that carry Russian oil and oil products do not have a G7 jurisdiction nexus, they are entitled to operate entirely legally in accordance with the rules and laws that apply to them. The extent and scale of operations has led to the growth in what observers and commentators have referred to as a shadow or parallel fleet of ships carrying Russian oil and oil products (above or below the OPC). This growth in so-called parallel markets is a direct consequence of the introduction of a regime that imposes severe restrictions and compliance obligations on entities that operate within the G7 while allowing entities outside the G7 the freedom to operate legitimately, provided there is no G7 nexus. The OPC, therefore, appears increasingly unenforceable as more ships and associated services move into this parallel trade.

Ships that continue to be insured by the International Group Clubs apply compliance regimes and perform extensive due diligence, such that a Club is protected from a sanctions breach that may have been committed by the insured shipowner. Clubs will take immediate action either to terminate the contract of insurance with the insured or, if available, invoke the cesser clause effectively ending the relationship between the insurer and insured. The International Group is concerned that increasing responsibility and obligations on companies in the G7 coalition will result in a further migration of trade activities and ancillary services outside of the G7. We estimate around 800 tankers have already left the International Group Clubs as a direct result of the introduction of the OPC. This will in effect limit the enforcement and effectiveness of the OPC.

2. Whether assets frozen as part of the UK's financial sanctions on Russia should be confiscated, and whether there are legal precedents for such a move?

No comment.

3. Whether financial sanctions imposed by the UK should be widened to include those who purchase Russian oil and gas?

No comment.

4. The effectiveness of the work of the Office of Financial Sanctions Implementation (OFSI).

Evidence would be welcome on, but does not need to be limited to:

a. Guidance provided by OFSI

The Industry guidance provided by OFSI on UK Maritime Services Ban and Russian Oil Price Cap regime (OPC) has been helpful. Over the course of the OPC from its inception to date, HMT sanctions policy officials and OFSI have engaged with the International Group in a collaborative way, as and when appropriate. The International Group has willingly assisted

officials by providing both background information on marine insurance and the operation of the shipping sector, including detailed information on specific maritime third-party liability insurance issues, which both HMT policy and OFSI have considered and used in the development of policy and its implementation through regulations.

Consideration should be given to replicating the FAQ format as adopted by the EU and US.

b. OFSI's licensing regime

A P&I Club with a UK nexus cannot avoid its legal obligations to third parties arising under several international conventions that have been developed by the UN agencies responsible for the regulation of labour (International Labour Organisation) and maritime activities (International Maritime Organisation). Such conventions include liability and compensation treaties in respect of pollution damage from ships, injury and/or death of seafarers and passengers and the removal or shipwrecks deemed to be a hazard. The 12 P&I Club members of the International Group each provide third party liability insurance to shipowners. This benefits claimants of a maritime accident or disaster e.g., a significant marine environmental disaster affecting coastlines and local amenities or removal of wreck. Absent the provision of P&I insurance to shipowners, or financial security that is relied upon by States, for liabilities arising from maritime accidents, claimants such as State interests, local authorities, seafarers, passengers, fishers and aquaculture producers may be uncompensated for substantial losses that they incur. The OFSI licencing regime is important when P&I Clubs face legal obligations to third parties arising from the conventions or where legal obligations arise from actions brought before a competent court in a maritime jurisdiction. The P&I Clubs rely on the timely issuance of licensing to respond to a claim promptly. The experience of some Clubs has indicated that issuing a licence can take considerable time and it would be of benefit if this process could be accelerated. An obvious example of where time is of the essence is an oil pollution incident where a P&I Club needs to respond urgently to limit the extent of pollution damage best possible.

c. The resources available to OFSI

No comment.

d. Enforcement work by OFSI

See response to (e).

e. OFSI's implementation and enforcement of the oil price cap

The P&I Clubs comprising the International Group fully co-operate with the relevant UK trade and financial sanctions enforcement agencies when they receive a request for information. However, more recently the information that has been requested from OFSI appears to invite speculation on future voyages that may or may not be undertaken by an insured's ship. Furthermore, this appears to go beyond the necessity to gather information in consideration of enforcement action by seeking information regarding any vessel going into Russia or intending to trade into Russia. The Clubs are not able to provide information on future trading intentions of its members as these are often subject to charterers' instructions and the way in which oil products are traded globally. Responding to information requests in the short timescales afforded by OFSI are time and resource intensive and result in costly legal

fees. It is worth noting that, to date, no wrongdoing by an International Group Club has been alleged and as previously stated, Clubs fully co-operate with OFSI by providing the information that is demanded by enforcement officials. Enforcement of sanctions regulations is strictly the responsibility of OFSI, and as such, International Group Clubs should not be expected to be an extended arm of enforcement as the P&I Clubs do not have statutory or constabulary powers. The consequence of further restrictive enforcement measures may result in a further migration into the parallel trade.

f. OFSI's international cooperation

The International Group fully supports greater international co-operation between the G7 coalition and would extend such co-operation to ensuring that there is full alignment of sanctions policy and its implementation through regulations, where such is possible. Divergence in regulations and different enforcement strategy amongst the G7 coalition can and has created problems for International Group P&I Clubs and its members, as evidenced by the recent OFSI requirement to provide itemised ancillary costs under the revised Guidance on the Oil Price Cap regime within 28 days of a request being made. This differed to the US and EU who had requested information within 30 days. The International Group approached OFSI asking for UK policy to align with the UK's G7 coalition partners and the request was granted following constructive dialogue which was greatly appreciated.

To illustrate the importance of alignment, had there been a use of two different limits across the G7 coalition, i.e. 28 days and 30 days respectively, compliance would have been extremely difficult in practice. By way of example, all International Group Clubs have presences in multiple jurisdictions and with UK citizens and/or UK qualified solicitors working across its overseas offices. In such circumstances, lawfulness of responding to a claim would have turned on whether the individual responding to a reported claim on day 29 had a UK nexus or not. The same example goes not just for claims handler but also for underwriters and sanctions experts.

The IG would also request that OFSI, alongside its other G7 coalition counterparts engage in urgent bilateral discussions with India and China since these States seem to be receiving high volumes of Russian oil and it is not entirely clear whether imports of such are OPC compliant. The sale and purchase of Russian oil above the price cap has led to an expansion of a parallel market of traders, shipowners and insurers who operate out of G7 coalition jurisdictions. This growth in parallel activities now appears to account for the majority of Russian oil and oil products shipped to third countries which undermines the policy objectives of the OPC regime.

g. OFSI's work in the insurance sector

No comment.

h. OFSI's work in the maritime sector

Guidance published | engagement with industry

Early engagement with industry to deliver the OPC policy was crucial as it was clear that there was a misunderstanding of the contractual relationships and obligations that underpin the way in which oil and oil products are transported around the world. Had this not been the

case, the OPC would have been unworkable from the outset. It is vital that the guidance is reflective of shipping practices and can be adhered to, otherwise it will prevent the G7 coalition from achieving its goals.

5. The effectiveness of the system of designation of financial sanctions, in that it relates to the implementation of financial sanctions, and the relationship between the designation and implementation of financial sanctions.

No comment.

6. The implementation of financial sanctions against Russia by each part of the financial sector (including the insurance sector), and the maritime sector.

See previous comments.

7. The mitigation of any unintended consequences of financial sanctions.

See previous comments relating to parallel trading activities.

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